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APR 04 2008

Serial No. 10/517,099

Amend. In Resp. to Off. Act. of Jan. 23, 2008

UTILITY PATENT

B&D No. P-US-PR-1080

REMARKS

Applicants have amended Claims 5-6 and canceled Claims 21-23. Currently in the application therefore are Claims 1-6, 8-9, 11 and 17.

The Examiner objected to the drawings for not showing the subject matter called in Claims 21-23. Furthermore, the Examiner rejected Claims 21-23 under 35 USC § 112, second paragraph, as being indefinite. In response, Applicants have canceled Claims 21-23, rendering these rejections moot.

The Examiner objected to Claims 5-6 for claiming a restraining member in addition to the track followers of Claim 1. In response, Applicants have amended Claims 5-6 to state that the restraining member is part of at least one track follower.

The Examiner rejected Claims 1, 3-4 and 8-9 under 35 USC § 102(b) as being anticipated by US Patent No. 4,328,728 ("Ferdinand"). In addition, the Examiner rejected Claim 2 under 35 USC § 103(a) as being unpatentable over Ferdinand in view of US Patent No. 5,988,031 ("Wixey"). The Examiner also rejected Claim 11 under 35 USC § 103(a) as being unpatentable over Ferdinand in view of US Patent No. 5,097,601 ("Pollak"). Reconsideration and withdrawal of these rejections are respectfully requested.

As shown in Ferdinand, each fence 100 can rotate about 138 to change its position relative to the cutting line. Because each fence 100 rotates about a fixed point, they are not longitudinally adjustable along the cutting line. In other words, they do not move forwardly or rearwardly in a direction parallel to the cutting line. Therefore, if a fence is moved between two

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positions, the fence plane in the first position will not be parallel to the fence plane in the second position.

By contradistinction, Claim 1 requires that the fence be "longitudinally adjustable along along a direction substantially parallel to the cutting line so that the fence is disposable in a first position defining a first plane supporting a workpiece and a second position defining a second plane supporting the workpiece, the first and second planes being substantially parallel."

The Examiner argues that the fence is longitudinally adjustable via screws 132, 115 and 138. This is incorrect. Screw 138 does not allow for any type of longitudinally adjustment, as screw 138 is attached to a non-movable rib 136, which is part of the platform 30. *See Ferdinand*, col. 5, lns. 63-65 and FIG. 8.

Similarly, screws 115 are non-adjustably secured to fence 100 so that guide member 114 can slide along curved slot 104, which effectively rotates about screw 138. *See Ferdinand*, col. 5, lns. 53-55 and FIGS. 3 and 7-8. In other words, screw 115 works with guide member 114 to allow rotational movement of fence 100, not the claimed longitudinal movement.

Finally, screws 132 do not allow for longitudinal movement. Instead, screws 132 allow the user to unlock the rotational position of fence 100, so that fence 100 can rotate about screw 138. *See Ferdinand*, col. 6, lns. 5-14 and FIGS. 3 and 7-8.

In other words, nothing in this arrangement allows the user to move the fences 100 so that they move in a direction parallel to the cutting line, i.e., the claimed longitudinal direction, so

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fence plane in a first position of fence 100 is parallel to the fence plane in a second position of fence 100. Therefore Ferdinand cannot anticipate Claim 1 and its dependent claims.

Furthermore, mounting members cannot be the claimed rigid support element. Attached is a print-out from the Merriam Webster Online Dictionary (www.m-w.com) for the term "rigid."

As seen in the print-out, "rigid" is basically defined as inflexible or stiff. Because fences 100 move relative to each other about axis 138, the mounting members 116 also rotate about axis 138. Mounting members 116 are effectively a hinge that allow for rotation. A person skilled in the art would not call a hinge "unflexible" or "rigid," anymore than such person would call a door hinge "unflexible."

By contradistinction, Claim 1 calls for "a rigid support element extending outside the first plane when in the first position and extending between and rigidly connected to the first and second portions." This helps in ensuring that the first and second portions are substantially coplanar in the different positions, something that does not occur in Ferdinand. Accordingly, Ferdinand cannot anticipate Claim 1 and its dependent claims.

Such missing elements are not found Wixey or Pollak. Accordingly, even if Ferdinand were to be combined with Wixey or Pollak, the resulting combination would not have all the claimed elements. Therefore such combinations cannot render unpatentable Claim 1 and its dependent claims.

The Examiner rejected Claims 1-6, 8-9, 17 and 21-23 under 35 USC § 103(a) as being unpatentable over US Patent No. 4,464,962 ("Myhre") in view of US Patent No. 6,561,068

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("Meredith") and US Patent No. 5,755,148 ("Stumpf"). Reconsideration and withdrawal of these rejections are respectfully requested.

Admittedly, Myhre discloses a saw with two guide tracks in the working surface, and first and second fence portions slidably movable the guide tracks. However, Myhre, as previously admitted by the Examiner, discloses a table saw, not a chopping miter saw.

The Examiner uses Meredith to teach the claimed chopping action. However, such modification violates the MPEP for several reasons. First, the Examiner cannot modify a reference if the proposed modification renders the reference "unsatisfactory for its intended purpose." MPEP § 2143.01(V) (*citing In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

In the present case, the Examiner is modifying Myhre so that the Myhre table saw can no longer act as a table saw. The intended purpose of a table saw is to provide a rotating blade into which a user can move a workpiece to cut. Because of this arrangement, the user can cut a workpiece of any size as the user can just slide the workpiece into the blade. In other words, the table saw provides unlimited cutting capacity.

A miter saw however works differently. A workpiece is held stationary against a fence so that the blade can cut the workpiece. However, the cutting capacity limited by the size of the blade, the range of sliding movement, etc. Nonetheless, the cutting capacity is limited.

If the Examiner were to modify Myhre as proposed, the Examiner would limit the cutting capacity of the Myhre table saw, rendering it unsatisfactory for its intended purpose (providing a

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power tool with unlimited cutting capacity being able to cut a workpiece of any size). Therefore, the Examiner cannot modify Myhre as proposed.

Furthermore, the Examiner cannot modify a reference if the proposed modification changes the principle of operation of the reference. MPEP § 2143.01(VI) (*citing In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)).

In the present case, the Examiner is changing the principle of operation of Myhre by turning the Myhre table saw into a miter saw. As discussed above, the Myhre table saw allows the user to cut a workpiece of any size by just slide the workpiece into the blade. A miter saw however works differently. A workpiece is held stationary against a fence so that the blade can cut the workpiece. In other words, the principle of operation of Myhre is being changed by the Examiner's proposed modification. Therefore, the Examiner cannot modify Myhre as proposed.

Because Myhre cannot be combined with Meredith as proposed by the Examiner, the obviousness rejection is improper.

Finally, the Examiner rejected Claim 11 under 35 USC § 103(a) as being unpatentable over Myhre in view of US Patent No. 4,249,442 ("Fittery") and US Patent No. 5,097,601 ("Pollak"). Reconsideration and withdrawal of this rejection is respectfully requested.

This rejection is unclear as the Examiner identifies "Myhre as modified by Owens" in the body of the rejection. Being that Owens is not of record, Applicants do not understand how the Examiner is modifying Myhre. Applicants will assume that this was a mistake and that the Examiner is restating her rejection from the previous Office Action.

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Applicants note that Claim 11 is dependent upon Claim 1, and thus include all elements of Claim 1.

As admitted by the Examiner, Myhre discloses a table saw, not a chopping miter saw. Even if Myhre were to be combined with Fittery, the saw assembly would be movable upwardly towards the table for cutting a workpiece.

By contradistinction, Claim 1 requires "a saw assembly pivotally connected to the base, ... the saw assembly being movable downwardly towards the base for cutting a workpiece placed on the base." This effectively defines a chopping or miter saw, rather than a table saw. Therefore the Myhre/Fittery combination cannot render unpatentable Claim 1 and its dependent claims.

Furthermore, the Myhre fence is movable during a cutting operation to push a workpiece into the blade. *See* Myhre, col. 2, lns. 34-35 & col. 4, lns. 26-30. Similarly, Fittery provides slots for sliding a miter gauge and pushing workpieces into the blade. Pollak discloses a miter gauge that is slidable along a track for pushing a workpiece into the blade. Accordingly, none of these references disclose a stationary fence that provides a miter angle during the cutting operation.

By contradistinction, Claim 1 requires "the fence remaining stationary relative to the cutting plane during a cutting operation of a workpiece placed on the base." Because Myhre, Fittery and Pollak do not disclose such missing element, the Myhre/Fittery and Myhre/Fittery/Pollak combinations cannot render unpatentable Claim 1 and its dependent claims.

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No fee is believed due. Nonetheless, the Commissioner is authorized to charge payment of any fees due in processing this amendment, or credit any overpayment to Deposit Account No. 02-2548.

In view of the foregoing, Claims 1-6, 8-9, 11 and 17 are patentable and the application is believed to be in condition for formal allowance.

Respectfully submitted,



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Search

rigid

One entry found.

rigid

Main Entry: **rig·id** 1

Pronunciation: *ri-jid*

Function: *adjective*

Etymology: Middle English *rigide*, from Latin *rigidus*, from *rigere* to be stiff

Date: 15th century

1 a : deficient in or devoid of flexibility

<*rigid* price controls> <a *rigid* bar of metal> **b** : appearing stiff and unyielding <his face *rigid* with pain>

2 a : inflexibly set in opinion

b : strictly observed <adheres to a *rigid* schedule>

3 : firmly inflexible rather than lax or indulgent <a *rigid* disciplinarian>

4 : precise and accurate in procedure <*rigid* control of the manufacturing process>

5 of an airship : having the outer shape maintained by a fixed framework

— **rig·id·ly** *adverb*

— **rig·id·ness** *noun*

synonyms RIGID, RIGOROUS, STRICT, STRINGENT mean extremely severe or

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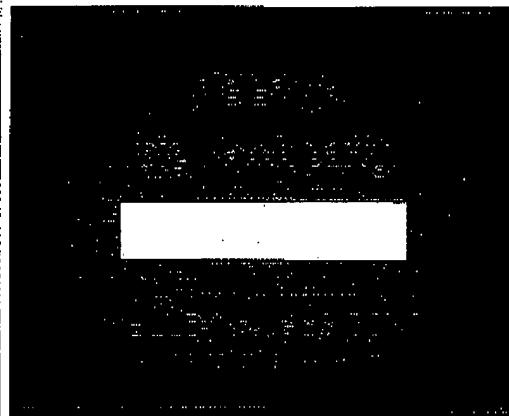
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stern. **RIGID** implies uncompromising inflexibility <*rigid* rules of conduct>. **RIGOROUS** implies the imposition of hardship and difficulty <the *rigorous* training of recruits>. **STRICT** emphasizes undeviating conformity to rules, standards, or requirements <*strict* enforcement of the law>. **STRINGENT** suggests severe, tight restriction or limitation <*stringent* standards of admission>.

synonyms see in addition **STIFF**

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